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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 584

QUINN K. SMITH,

Petitioner

vs.

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA,

Respondent

REPLY BRIEF OF PETITIONER TO OPPOSITION BY RESPONDENT

OTIS W. BULLOCK
508 Commercial Building
Shreveport, Louisiana

Attorney for Petitioner

FREDERICK J. STEWART
218 Ward Building
Shreveport, Louisiana

Of Counsel

LECOMTE, SHREVEPORT, LOUISIANA

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MAY IT PLEASE THE COURT:

Respondent has deemed it necessary to file a brief in opposition to the granting of a writ in this case, urging that the Court is too busy to consider common, garden variety facts involving no law whatever; that this Court will not consider "inferences" to be drawn from the facts.

It is from garden variety facts that great principles evolve; it was from garden variety facts that the Supreme Court of Louisiana announced its far reaching definition

of the preemption rule applicable to intersectional collisions in this state, which is in direct opposition to the rule imposed by the lower federal courts in this case, denying plaintiff recovery.

There are two important issues involved here:

1.

Shall the federal courts sitting in Louisiana in diversity cases apply different rules of negligence than those established by its highest court, the application or choice determining recovery vel non.

Reduced to its simplest form, we have this circumstance: The Orleans Court of Appeals held in *Booth v. Columbia Casualty Co.*, 74 So 2nd 776, at page 777:

> "It is rudimentary that the plaintiff, as he approached the blind intersection, was charged with the responsibility of looking for traffic approaching the intersection on St. Louis Street before he himself entered the intersection. Moreover, this obligation required plaintiff to maintain his car under such control as to enable him to stop his car on entering the intersection if he could not safely complete the crossing."

The Louisiana Supreme Court, by unanimous decision, reversed the Orleans Circuit, granting Booth recovery, the facts showing that he properly stopped before attempting a crosssing of St. Louis Street but due to a blind intersection, he had to travel out into the streets before he could see the truck approaching from his right and on a right of way street. Since he first entered the

intersection, the highest tribunal of this state held that Booth acquired the right to proceed — had the right of way over defendant and granted recovery.

We have exactly the same principle and facts in the instant Smith case, wherein the trial court denied recovery, applying the very rules as conditions precedent to recovery set up by the Orleans Court of Appeals; furthermore, all the decisions relied on by the lower federal courts here, are the same requirements of the Orleans Circuit in which no Review was requested by the parties cast therein, and which views the Supreme Court has specifically rejected.

It is now indeed ironic if the federal appellate courts sitting in Louisiana, applying negligence rules in diversity cases, may adopt the Orleans Circuit cases as authority, and ignore the law applied by the Supreme Court.

This issue, far from being without any law, is of national, as well as state wide importance. For if the Supreme Court of the United States is too busy to correct this trend, the doctrine established in *Erie v. Tompkins*, and followed intact in a long line of decisions thereafter, will be meaningless in the vast field of tort law, one rule applying in the state courts and a different rule applied by the federal tribunals sitting side by side. And which view—that of the Supreme Court or that of the Orleans Circuit—is the better view, is totally immaterial on this issue.

2.

Even if we concede—which we do not—that there was some minor element missing in the instant Smith case, required by the Louisiana Supreme Court under the Booth decision and doctrine, respondent's driver, McGill, is chargeable therewith in approaching, entering and causing the impact with the right side of Smith's vehicle, 3½ feet across the center of Pierre Avenue, to his left of the center, which fact places the burden of proof on him, of exculpating himself from that negligence. He is foreclosed by his own testimony, of the charge of gross negligence, for he said he swerved neither to the right or the left but kept a straight course ahead, up until the impact. Far from "inferences", we have mathematical certainty establishing this fact, plus McGill's sworn testimony.

This very valuable "tool" of a damage suit lawyer is totally ignored in the decisions complained of, the clearly erroneous conclusions emanating from the hurried treatment of the case by the trial judge in his haste to apply (or misapply) the pre-emption doctrine of the intermediate appellate courts of Louisiana to the facts.

The presumption of negligence is on the party on the wrong side of the road. *Potter v. Glassell*, 146 La. 687, 83 So. 687. This presumption of negligence is applied in right-angled intersectional collisions. *Cooke v. Seegers*, 17 La. App. 313, 136 So. 216; *Golomsky v. Kihneman*, 16 La. App. 304, 134 So. 266; *Wilhite v. Gilmore*, 91 So. 2nd 461. See quotations from the decisions (99-106 Record). Only a casual relation to the cause of the impact is required by Louisiana appellate and Supreme

Court decisions, to place the burden of proof on the driver to the left of the center of a street or highway. Granting defendant three and one-half feet—nearly half the width of the truck—is too much footage to exempt from the operation of this rule of negligence, for it is clear that plaintiff was deprived of just that much time and opportunity to avoid the collision at this blind intersection. At his slow speed, he could have stopped before reaching the path of the truck in the west (rather than in the east) traffic lane, although he (Smith) had the right of way over McGill. Certainly the casual connection of McGill's negligence is self evident.

CONCLUSION

The rules of negligence enforced by the federal tribunals below are clearly erroneous, affecting as they do the important field of damage suits filed under diversity of citizenship jurisdiction, certiorari should be granted herein.

Respectfully submitted,

OTIS W. BULLOCK
508 Commercial Building
Shreveport, Louisiana
Attorney for Petitioner

FREDERICK J. STEWART
218 Ward Building
Shreveport, Louisiana
Of Counsel